September 19, 2019

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: Ex Parte Communication
Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Ms. Dortch:

On September 17, Charles McKee and I of Sprint met with Nirali Patel, Chairman Pai's Wireline Advisor, and Arielle Roth, Commissioner O'Rielly's Wireline Legal Advisor, in separate meetings; and on September 18 with Travis Litman, Commissioner Rosenworcel's Senior Legal Advisor, regarding the Draft Order on access stimulation in the above-captioned proceeding.[1] In these meetings, Sprint expressed its strong support for the tentative decision in the Draft Order to require access stimulating LECs – rather than IXCs – to bear financial responsibility for all tandem switching and transport service charges associated with the delivery of access stimulation traffic to the LEC end office or its functional equivalent. In Sprint's view, aligning financial responsibility in this manner will help reduce the incentives to engage in access stimulation schemes. To further reduce the potential for inefficient access arbitrage, Sprint suggested the following clarifications to the Draft Order.

First, to ensure that all costs of tandem switching and transport service are properly assigned to the access stimulating LEC, and to prevent an access stimulating LEC from designating a traffic route that does not include a carrier operating under a tariff governed by the Commission's rules, the Draft Order's references to "tariffed" tandem switching and transport charges should be revised to remove the word "tariffed". Thus, paragraph 4, and consistently elsewhere throughout the Draft Order, should be revised as follows: [2]

[1] FACT SHEET "Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage", Report and Order and Modification of Section 214 Authorizations, WC Docket No. 18-155 (September 5, 2019) ("Draft Order").

[2] Other sections of the Draft Order, including the following, should be similarly modified:

> To eliminate the use of the ICC system to subsidize services, including the many "free" services offered through access stimulation schemes, we adopt rules making access-stimulating LECs—rather than IXCs—financially responsible for the ~~**tariffed**~~ tandem switching and transport service access charges associated with the delivery of traffic from an IXC to the access-stimulating LEC end office or its functional equivalent.

Second, given the Commission's recognition that high volumes of stimulated traffic can result in call completion problems and dropped calls (see paragraph 77 of the Draft Order), the Draft Order should affirmatively state that an IXC/wireless carrier satisfies its rural call completion obligation by monitoring the delivery of access-stimulation traffic to the LEC-chosen Intermediate Access Provider.

Third, the Draft Order should re-iterate that classifying a high-volume calling provider, such as a "free" conference calling provider or a chat line provider, as an end user for purposes of defining access stimulation in no way affects or supersedes the definition of end user in other respects. The Draft Order (paragraph 49) emphasizes that this end user classification is to be used only for purposes of defining access stimulation, "regardless of how that term is defined in an applicable tariff."

Because there is significant litigation still pending that relates to the existence of an "end user" as defined in the tariffs, FCC rules and orders, the Commission should clarify that the consideration of a "free" conference calling provider or chat line provider as an end user for purposes of identifying entities engaged in access stimulation does not overturn or supersede the previous Commission decisions enforcing preexisting rules and tariff provisions, and that those decisions still apply in determining whether the carrier provided access service. Such a clarification is consistent with the Commission's action in the *Intercarrier Compensation* proceeding.[3] Sprint suggests that the Draft Order include similar language, with the following sentence added to footnote 141: "The Commission adopted several orders resolving complaints

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(i) delete the word "tariffed" in paragraphs 17 and footnote 47; 20 (two times); 62; 68; 69; 70 (third sentence); footnote 215; 4, 30 and 31 (two times) in the Appendix B Final Regulatory Flexibility Analysis;
(ii) delete the last two sentences of paragraph 70;
(iii) delete the last sentence of footnote 192.

[3] *See In the Matter of Connect America Fund,* WC Docket No 10-90, Order rel. February 3, 2012, para. 25 ("…the Commission adopted several orders resolving complaints concerning access stimulation under preexisting rules and compliance with the Communications Act. We clarify that the *USF/ICC Transformation Order* complements these previous decisions, and nothing in the *USF/ICC Transformation Order* should be construed as overturning or superseding these previous Commission decisions."). *See also* Letter from Joe Marcus, FCC, to D.C. Circuit Ct of Appeals dated December 1, 2011.

concerning access stimulation under preexisting rules and compliance with the Communications Act. We clarify that this *Order* complements these previous decisions, and nothing in this *Order* should be construed as overturning or superseding these previous Commission decisions."

Sprint also takes this opportunity to respond to a recent ex parte letter filed by NTCA in this proceeding.[4] NTCA asserted that using a 6:1 ratio to identify access stimulators, as proposed in the Draft Order, will cause "innocent" LECs to become financially responsible for tandem switching and transport charges. NTCA thus has proposed (p. 6) that the Commission deem a rural LEC to be engaged in stimulation only if the RLEC has a 10:1 ratio and has at least 3 million minutes of use of interstate calls per month to any given end office.

As an initial matter, any LEC that meets the prescribed terminating to originating threshold has the option of filing a petition for waiver of the new Section 51.914 rule. This waiver petition must be filed publicly and must include information documenting the special circumstances which demonstrate why the petitioner is not engaging in access stimulation. While the existing waiver process should be sufficient to address NTCA's concerns here, Sprint would not object to deeming such a waiver petition granted if it is not opposed by any party within 60 days. If the petition is granted (either by default after 60 days, or by affirmative Commission action after consideration of any filed objection to the petition), the petitioner would have the right to recover from the IXC/wireless carrier the legitimate tandem switching and transport charges not paid by the IXC during the interim period.

The goal of this proceeding is the elimination of access stimulation schemes. As noted above, Sprint strongly supports the measures included in the Draft Order, including the use of a 6:1 ratio, as effective tools to help identify and address situations involving harmful access stimulation. Modifying the proposed ratio from 6:1 to 10:1 would increase the risk that harmful access stimulation schemes will continue. More significantly, however, the addition of a minute threshold, particularly one that would be applied on an end office specific level, would create a significant loophole.

If the Commission determines that a 6:1 ratio would impose inadvertent burdens on small RLECs, and modifies that ratio to 10:1, it should reject the addition of a volume threshold. A volume threshold serves no purpose other than to provide a ceiling on the number of minutes that can be stimulated without triggering the Section 51.914 remedy. NTCA's concern and the factors it cited (seasonality, a business that has primarily terminating traffic, etc.) relate solely to an RLEC's terminating to originating traffic balance, and this concern is adequately addressed by use of the higher threshold ratio. This modified approach (a 10:1 ratio, with no minute threshold) would balance the need to reduce incentives to engage in access stimulation on the one hand, and protecting small RLECs on the other.

[4] Ex parte letter from Michael Romano, NTCA, to Marlene Dortch, FCC, dated Sept. 17, 2019.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. If you have any questions, please feel free to contact me at (703) 433-4503.

Sincerely,

/s/ Norina Moy

Norina Moy
Director, Government Affairs

Cc: Nirali Patel
Arielle Roth
Travis Litman
Lisa Hone
Gil Strobel
Lynne Engledow